

The Law Office of
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*Estate, Trust, Tax and
Long Term Care Planning*



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**"Accumulating wealth is one thing. Preserving it is another.
Let our family help yours."**

Special Report

Outright v. In-Trust Distribution to Heirs

In each estate plan, the decision must be made whether the recipient of the inheritance is to receive their inheritance outright or if it is to be held for the recipient's benefit in some type of trust arrangement. In looking over the last decade, it seems to us leaving assets outright to an heir has become much more risky as divorces, lawsuits and financial hardship have fallen on many Americans. Additionally, taxes are becoming an even greater threat to many as inheritances are reduced by estate taxes over one or more generations. Here are a few statistics worth pondering:

Divorce rates:

- Every year more than 1 million children are affected by divorce.
- According to the Statista Research Center there were 1,680,000 marriages in 2020. According to the Legal Jobs website there were 630,000 divorces in 2020. This extrapolates to a divorce rate of roughly 38% of those who married in 2020 and the United States has the 3rd highest divorce rate in the world.
- First marriages ending in divorce have an average duration of just under 8 years.

Bankruptcy statistics:

- Bankruptcy filings have been trending downward according to the US Courts website. Ending June 30, 2022 bankruptcy filings dropped 17.7% during the preceding 12 month period. Business bankruptcy annual filings fell from 18,511 to 12,748 for the year ending June 30, 2022. For individuals the filings fell from 462,309 to 380,634 during the same time period.
- Bankruptcy filings have fallen since 2010 and the trend has accelerated during the Covid-19 pandemic. We speculate the downward trend in bankruptcy filings in recent years is in part due to the buoyance of credit markets with all of the Federal relief money which flowed into the economy.

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Civil Lawsuits:

- According to the website Quizlet there were 100 million lawsuits filed in 2022. The Doyle law office reports your likelihood of being sued is 10% in any given year and a 33% chance during your lifetime.

Americans with Disabilities:

- Americans with disabilities who rely on asset-based assistance, such as Supplemental Security Income (SSI) and Medicaid are substantial. In fact, 54 million Americans suffered from a disability in 2010. Of those, 11 million need assistance daily to meet their living needs.

Between lawsuits from creditors of all types, as well as divorces, any inheritance you consider leaving to an heir is subject to the risk of being depleted, either voluntarily or involuntarily by the heir. In the case of a divorce, an inheritance can be treated as separate property and not subject to division by a Court, but the appreciation in the inherited assets can be considered marital property, causing complications when the divorce court is forced to intervene to divide the couple's assets.

In more and more estate plans, we are recommending the assets not be distributed to the heir outright, but instead leaving all or a large portion of any distribution to an heir in trust.

What does leaving a distribution in a trust mean? A trust is a legal arrangement wherein a Trustee (who is an individual or financial institution) manages the assets for the Trust Beneficiary or Beneficiaries, and distributes them in accordance with the wishes of the trust creator (sometimes referred to as the Settlor). The creator can place whatever restrictions he or she wishes to make regarding distributions from the trust.

There are a multitude of types of trusts to choose from depending upon your circumstances. Here are a few types:

- Trust with inherited assets that are established to avoid having the inheritance considered as an available resource for public benefit purposes (Special Needs Trust).
- Trust used to help manage assets for those recipients who are not financially savvy and perhaps subject to being easily influenced by "friends" or business associates (Asset Protection Trust).
- Trust established to protect assets from being subject to future estate taxes (Dynasty Trust).
- Life Insurance Trust (ILIT) used to keep insurance proceeds from being included in the decedent's estate as well as the future beneficiary's estate.

The type of trust you may wish to create for your heir or heirs depends upon his or her needs. An estate does not have to meet a threshold size for qualifying to set up a trust. We have

established trusts to hold assets valued at under \$5,000, with a family member as a trustee to protect assets for the heir and to ensure the assets are being used as the trust creator wishes.

Bottom line:

Before you decide to distribute assets outright to any heir, review the types of trusts you could create to hold the inherited assets. It is important to select the most appropriate type of trust to ensure your wishes are fulfilled and the inherited assets are not dissipated against your wishes, either voluntarily or involuntarily by your heir.